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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,610	02/27/2004	Roy K. Lim	4002-3438	9038

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EXAMINER

REIMERS, ANNETTE R

ART UNIT PAPER NUMBER

3733

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/789,610

Applicant(s)

LIM, ROY K.

Examiner

Annette R. Reimers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 and 38-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 38-41 is/are rejected.
- 7) ☒ Claim(s) 3-31 and 42-68 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

It is noted that full faith and credit is being given to the action by the previous Examiner in accordance with MPEP 706.04.

Claim Rejections - 35 USC § 102

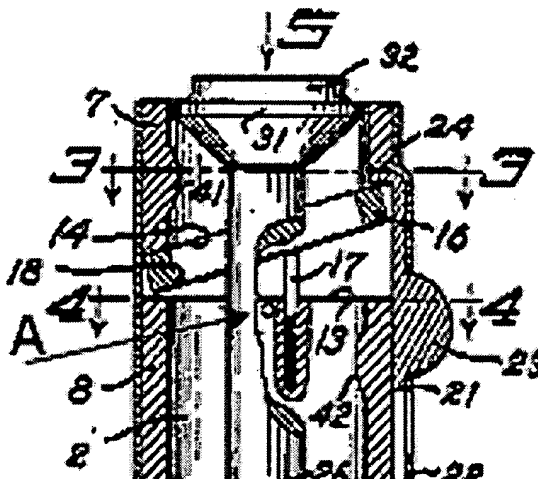
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Krafft (US Pat 2681807).

In regards to claim 1, Krafft discloses an apparatus having a base (26), a shaft (4) that is connected to the base (by 38, 34, and 28) and being slidable with respect to the shaft, wherein at least a portion of the base, e.g. 32, is external of the relatively rearward end of the shaft, a plate (18) with an aperture (which allows the fuse to enter) where the plate has two positions (figure 1 and 2) where figure 2 shows the plate in the "locked" position, one of which locks the implant in place, and a sleeve (21, 23) which partially surrounds the shaft and is slidable with respect to the base and plate. In regards to claim 2, Krafft discloses having a ratchet mechanism (17), where the coils of the spring are the teeth of a bar and a pin (A, see figure below) is the pawl. The ratchet is connected to the base and sleeve, and is operable to move the sleeve by pushing the plate (18), which is connected to the sleeve at (24).



Claims 38-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Krafft (US Pat 2681807) with a different interpretation.

In regards to claim 38, Krafft has a plate (18) with two edges and an aperture, a shaft (21, 23), which is connected to the plate at one edge (near 16) and can pivot the plate around the second edge (near 18). The plate moves between two positions (figures 1 and 2) where figure 2 shows the plate in the "locked" position. In regards to claims 39 and 40, Krafft discloses having a sleeve (7), which is slidable with respect to the shaft, and the sleeve has an end portion which is able to contact a spinal rod. As discussed above and in reference to claim 41, Krafft discloses having a ratchet mechanism (17), where the coils of the spring are the teeth of a bar and a pin (A, see figure above) is the pawl.

With regard to the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over Krafft, which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

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Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Allowable Subject Matter

Claims 3-31 and 42-68 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed on August 16, 2006 have been fully considered but they are not persuasive. Regarding the base (26), the base is used to support whatever is placed in the socket, e.g. a fusee (see column 3, 32-34). It appears that the previous examiner meant to state "sleeve (21,23) which partially surrounds the shaft." Appropriate correction was made above. In addition, it appears from the drawings (see figures 1 and 2) that the sleeve partially surrounds the shaft. In addition, at least a portion of the base, e.g. 32, is external of the relatively rearward end of the shaft. Regarding the ratchet mechanism, it is noted that the features upon which applicant relies (i.e., the mechanism acts in a discreet fashion while the spring press rod acts in a continuous fashion) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into

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the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Regarding the sleeve, the previous examiner cited 21, 23 as the sleeve not 24. The examiner stated "The ratchet is connected to the base and sleeve, and is operable to move the sleeve by pushing the plate (18), which is connected to the sleeve at (24)" (see above). Regarding claim 38, applicant appears to be using the nonanalogous art argument, which is only applicable for 103(a) rejections not 102(b) rejections as Krafft has been recited above by examiner.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER